IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.619 of 2007
CHANDRAMANTI DEVI
Versus
STATE OF BIHAR
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4. 10.9.2008. This application has been filed against the order dated 26.4.2007 passed by Additional Sessions Judge, F.T.C.-IV Nalanda at Biharsharif in Session Trial No. 361 of 2006 thereby the petition filed by the prosecution under section 319 Cr.P.C. for summoning the opposite party no. 2 as additional accused has been rejected.

Heard learned counsel for the petitioner. No one appeared on behalf of opposite party no. 2 in spite of valid service of notice.

The submission of the learned counsel for the petitioner is that the police in collusion with the accused persons did not mention the name of opposite party no. 2 in the FIR. However, subsequently the petitioner filed a protest-petition alleging that opposite party no. 2 was also one of the accused who participated in commission of the crime.

It is further submitted that in

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course of the trial six witnesses including the informant have already been examined. All the witnesses have categorically stated that opposite party no. 2 also participated in the crime and assaulted the deceased on his chest. In support of it, the photo copy of the evidence of the witnesses has been annexed as Annexure-3 series.

Considered the submission of learned counsel for the petitioner and perused the record as also the impugned order.

On perusal of the evidence of the witnesses, it is quite apparent that all the witnesses have categorically stated about the complicity of the opposite party no. 2 in commission of murder. There is specific allegation of overt act against opposite party no. 2.

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It further appears that just after lodging of the FIR, protest petition was also filed with the allegation that opposite party no. 2 also took part in commission of the offence. This case is also not very old. It is of the year 2004.

Thus, having regard to the facts and

circumstances of the case as well as the material available on the record, it is quite apparent that it is a fit case for summoning of opposite party no. 2 under Section 319 Cr.P.C. Accordingly, this application is allowed. Impugned order is hereby set aside. Court below is directed to issue summon against opposite party no. 2 for trial along with other accused persons.

kanchan **(Ghanshyam Prasad, J.)**

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